

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

DEC 12 2008

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

MARK WILLIAMS,)	2 CA-SA 2008-0074
)	DEPARTMENT A
Petitioner,)	
)	<u>DECISION ORDER</u>
v.)	
)	
HON. CONCEPCION BRACAMONTE,)	
Magistrate of the Town of Patagonia;)	
HON. ANNA M. MONTOYA-PAEZ,)	
Judge of the Superior Court of the State)	
of Arizona, in and for the County of Santa)	
Cruz,)	
)	
Respondents,)	
)	
and)	
)	
LOURDES HENDRICKSON,)	
)	
Real Party in Interest.)	
_____)	

SPECIAL ACTION PROCEEDING

Santa Cruz County Cause No. CV-08-317

JURISDICTION ACCEPTED; RELIEF GRANTED

Law Office of Mark L. Williams
By Mark L. Williams

Nogales
Attorney for Petitioner

¶1 In this special action, petitioner Mark Williams challenges the order of protection entered on October 27, 2008, by the respondent Concepcion Bracamonte, magistrate for the Town of Patagonia, and the order entered on October 28, 2008, by the respondent Anna M. Montoya-Paez, superior court judge for Santa Cruz County, continuing the effect of the protective order but remanding the matter to Judge Bracamonte for a hearing. Because of respondent Montoya-Paez’s order, this matter is interlocutory in nature; Williams has no equally plain, speedy, or adequate remedy by appeal; and we accept jurisdiction of this special action. *See* Ariz. R. P. Spec. Actions 1(a); *see also State v. Campoy*, 214 Ariz. 132, ¶ 4, 149 P.3d 756, 758 (App. 2006) (accepting special action jurisdiction to review order because “interlocutory in nature”). This court ordered a response to the petition for special action be filed by November 17, 2008, but real party in interest Lourdes Hendrickson has not filed a response. Although we may in our discretion treat this as a confession of error, *see State v. Superior Court*, 15 Ariz. App. 145, 147, 486 P.2d 825, 827 (1971), for the reasons stated below, we conclude Williams is entitled to special action relief on the merits of the petition in any event.

¶2 Respondent Bracamonte, a municipal court magistrate, apparently entered the order of protection as though she were a superior court judge. Presumably for that reason, respondent Montoya-Paez found respondent Bracamonte did not have “authority to issue an Order of Protection in Superior Court.” Indeed, because a paternity action was pending at the time Hendrickson filed the petition for order of protection, only a superior court judge

could address that petition. *See* A.R.S. § 13-3602(P). Section 13-3602(P) provides that “[a] municipal court or justice court shall not issue an order of protection if it appears from the petition that an action for . . . paternity . . . is pending between the parties.” The subsection provides further that, if the order of protection has been issued and “the municipal court or justice court determines that an action for . . . paternity . . . is pending between the parties, the municipal court or justice court shall stop further proceedings in the action and forward all papers . . . to the superior court” § 13-3602(P). Although Hendrickson failed to state in her petition that a paternity action was pending, the record before us confirms that fact, and she has not appeared or otherwise denied it. Therefore, the respondent Montoya-Paez should not have sent the matter back to respondent Bracamonte to conduct a hearing, but rather should have assigned it to a judge of the superior court.

¶3 Because respondent Montoya-Paez erred as a matter of law and consequently abused her discretion, *see City of Tucson v. Clear Channel Outdoor, Inc.*, 218 Ariz. 172, ¶ 58, 181 P.3d 219, 236 (App. 2008), and because respondent Bracamonte either exceeded or was threatening to proceed in excess of her jurisdiction or legal authority, we grant special action relief, *see* Rule 3(b) and (c), Ariz. R. P. Spec. Actions, and direct that further proceedings be conducted consistent with this decision. In light of our decision, we need not address whether destruction of personal property may be part of an order of protection issued pursuant to § 13-3602. In our discretion, we deny Williams’s request for an award of attorney fees. The statute Williams relies on, § 13-3602(P), does not support an award at this

junction. Moreover, as an attorney and pro se litigant he is not entitled to such an award. *See Lisa v. Strom*, 183 Ariz. 415, 419-20, 904 P.2d 1239, 1243-44 (App. 1995).

JOHN PELANDER, Chief Judge

Presiding Judge Howard and Judge Brammer concurring.